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# In the Supreme Court of the United States

**OCTOBER TERM, 1937.**

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THE SCHRIBER-SCHROTH COMPANY,

*Petitioner,*

VS.

THE CLEVELAND TRUST COMPANY,  
CHRYSLER CORPORATION,

*Respondents.*

No. 674.

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THE ABERDEEN MOTOR SUPPLY COMPANY,

*Petitioner,*

VS.

THE CLEVELAND TRUST COMPANY,  
CHRYSLER CORPORATION,

*Respondents.*

No. 675.

---

THE F. E. ROWE SALES COMPANY,

*Petitioner,*

VS.

THE CLEVELAND TRUST COMPANY,  
CHRYSLER CORPORATION,

*Respondents.*

No. 676.

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## RESPONDENTS' BRIEF ON THE SECOND PETITION FOR REHEARING

Upon Petition for Writs of Certiorari to the United States  
Circuit Court of Appeals for the Sixth Circuit.

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A. C. DENISON,

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WM. C. MCCOY,

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| <i>Petitioner,</i>             |   |          |
| vs.                            |   |          |
| THE CLEVELAND TRUST COMPANY,   | } |          |
| CHRYSLER CORPORATION,          |   |          |
| <i>Respondents.</i>            |   |          |

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## **RESPONDENTS' BRIEF ON THE SECOND PETITION FOR REHEARING**

**Upon Petition for Writs of Certiorari to the United States  
Circuit Court of Appeals for the Sixth Circuit.**

Petitioner presents nothing which has not already  
been presented to this Court for consideration twice be-



fore (once on the Petition for Certiorari and again on a Petition for Rehearing) except some of the statements contained in the affidavits appearing at pages 5 to 7. Even if evidence could be injected into a cause at this stage for the purpose of a petition for rehearing, as is undertaken to be done in this *ex parte* manner, the evidence attempted to be included in these affidavits is immaterial to any issue involved here, because the affidavits carefully, and apparently designedly, omit to say the only things that could make them material, as follows:

(1) The affidavit of Barac is carefully worded so as to avoid saying that the pistons illustrated in Figs. 1 and 2 are infringing pistons.

(2) In the affidavit of Duncan it is not said that the five per cent of pistons manufactured outside of the Sixth Circuit, or the ninety-five per cent made within the Sixth Circuit, are infringing pistons.

There is no allegation in either of the affidavits that the respondents now know, or ever did know, that the pistons shown in Figs. 1 and 2 were being offered for sale or sold by the Elgin Machine Works, Inc., at Elgin, Illinois, or by the Automotive Warehouse Company of St. Louis, Missouri, or the United Engine & Machine Company of San Leandro, California.

One other point that perhaps ought to be commented upon is the claim that the Court of Appeals was "strangely silent" with reference to the effect of the *Permutit v. Graver* and *Powers-Kennedy* cases. The Court of Appeals in its opinion stated that it could not deal with all of the questions involved in this extensive litigation and that it would limit its discussion to the

"more salient features" (92 Fed. (2) 333). The obvious fact follows, i.e., that the Court considered that there was no merit in the petitioners' contentions regarding the pertinency of these decisions on the facts involved in this litigation. (And see our full discussion of these two decisions in our Brief in Opposition to original Petition pp. 6 to 19.)

For our reply to the other matters presented in the Petition we direct this Court's attention to our briefs filed in opposition to the Petition for Certiorari and the rehearing thereon. For example, with respect to the blackfaced matter on page 13 of the Second Petition for a Rehearing, we call attention to the complete discussion and refutation on pages 6 to 19 of our "Brief for Respondents on the Petition for Certiorari."

The fact asserted on page 11, regarding illustrations there, is not supported by, but is contrary to, the record (R. pp. 177, 178, 203, 204, 246, 247, 254, 458, 460, 496, 528, 529, 536, 537, 552, 553, 554, 560, 567, 934-944, 1040; 1052, 1053, 1078. See also the opinion of the Court of Appeals 92 F. 2d 333 and 334.) Moreover, the earliest date of Schmeideknecht is subsequent to the established and accepted date of invention of the Gulick patent in suit.

Respectfully submitted,

A. C. DENISON,  
F. O. RICHEY,  
WM. C. MCCOY,

*Counsel for Respondents.*

May 25, 1938.